United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLEE

76-7634

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

RENE SOCKWELL, A MINOR, ET AL
Plaintiff-Appellees

v.

FRANCIS MALONEY, ET AL
Defendant-Appellants

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

BRIEF OF APPELLEES

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STATEMENT OF THE CASE

This is an appeal for a preliminary injunction granted on November 26, 1976, by the District Court, Zampano, J., in New Haven, Connecticut.

The Proceedings In The District Court

The Plaintiffs are four minor children who from April, 1973, until May, 1976, were on the foster care program of the State of Connecticut. Effective May, 1976, the Defendant Commissioner of the Department of Children and Youth Services and the Defendant Commissioner of the Department of Social Services, terminated the Plaintiffs' foster care benefits and the accompanying social services without prior written notice and without a prior opportunity for a hearing. The plaintiff children contacted both the Department of Children and Youth Services (hereinafter, DCYS) and the Department of Social Services (hereinafter, DSS), and requested that they be reinstated until a hearing could be held on their termination. Both DCYS and DSS informed the Plaintiffs that no such hearings are provided in the State of Connecticut for children in the foster care program. (Stipulations Nos. 6, 7, 8, and 9; Appendix, page 39a).

The Plainitffs then filed this civil rights action, 42 U.S.C. §1983, challenging, on constitutional and federal statutory grounds, the refusal of Defendant Commissioner to afford them written notice and a hearing prior to termination of their foster care benefits and social services.

Jurisdiction was based upon 28 U.S.C. §§1331, 1343(3) and (4) and 28 U.S.C. §2201 and 2202.

On June 14, 1976, Plaintiffs filed a Motion for Class Certification, a Motion for a Temporary Restraining Order, and a Motion for a Preliminary Injunction. After discussion in chambers and a subsequent hearing in open court, the Motion for a Temporary Restraining Order was denied by the District Court. A second hearing was held to conclude the testimony and argument the parties presented to the Court in support of their motions for class certification and for a preliminary injunction.

The Ruling Of The District Court

On November 26, 1976, the District Court issued a ruling on the two motions. As to class certification, the Court granted certification as requested by Plaintiffs, viz., of "all present and future foster children whose foster care benefits or Title XX social services are, or will be, discontinued, terminated, suspended, or reduced by the State of Connecticut." The Court's ruling specifically rejected the Defendants' attempt to limit the class of potential plaintiffs to "foster care children who judicial commitment has been revoked by the Superior Court on a finding that they were not 'uncared for' and who are living with a blood relative, thereby qualifying them for AFDC assistance under 42 U.S.C. §602(a)." (Ruling of the District Court, Appendix, page 23a).

As to the motion for a preliminary injunction, the Court applied the established Second Circuit test (Ruling, Appendix, page 24a) and found that "the plaintiffs have shown a probable likelihood of success on the merits and irreparable harm to themselves and the plaintiff class sufficient to warrant preliminary injunctive relief." (Ruling, Appendix, page 29a).

The Plaintiffs' Claims; The Defendants' Concessions

At the two hearings before the District Court and in a Stipulation of Facts prepared by the parties, the Defendant Commissioners have conceded the correctness of several of the Plaintiffs' claims. It may be helpful to the Court of Appeals to outline briefly what those claims are and which of them have been conceded.

Plaintiffs filed a three-count complaint, alleging:

1. that the failure to provide meaningful written notice and a hearing prior to terminating, suspending, or reducing foster care and Title XX services, deprives the plaintiffs of due process, Goldberg v. Kelly, 397, U.S. 254, 25 L.Ed. 2d 287, 90 S.Ct. 1011 (1970); Mathews v. Eldridge, 424 U.S. 319, 47 L.Ed. 2d 18, 96 S.Ct. 893 (1976);

2. that Defendant Maloney had violated Title IV-A of the Social Security Act, 42 U.S.C. §601 et seq., and the regulations thereunder, specifically 45 C.F.R. §205.10, which require written notice and a hearing before termination, suspension, or reduction of federally reimbursable foster care benefits provided by a state operating under a Title IV-A plan; and,

3. that Defendant Maher had violated Title XX of the Social Security Act, 42 U.S.C. §1397 et seq., and the regulations thereunder, specifically 45 C.F.R. §228.14 and 45 C.F.R. §205.10, which require written notice and a hearing before termination, suspension or reduction of social services provided by the State under Title XX.

The following facts were conceded by the Defendants and were found by the District Court:

1. That the Defendants terminated the Plaintiffs' foster care benefits effective May 15, 1976. (Stipulation No. 6, Appendix, pages 39a, 21a).

2. That the Plaintiffs' Title XX social services were reduced at the time they were terminated from foster care. (Stipulation No. 5, Appendix, page 39a). While they were foster children, a social worker was assigned to plaintiffs' family; when they were terminated from the foster care program, the social worker was discontinued from their case and was no longer able to see them. (Appendix, page 21a). Thereafter, the children were eligible to receive limited Title XX social services.

3. That the Plaintiffs received no written notice of the termination of their foster care benefits or their Title XX social services prior to the terminations. (Stipulation No. 7, Appendix, page 39a; Ruling, Appendix, page 21a).

4. That the Defendants did not offer the Plaintiffs or anyone in their behalf an opportunity for a hearing either prior or subsequent to the terminations of cash benefits or social services. (Appendix, page 64a).

That Defendants offered no hearing because it was not their policy to have such hearings for foster children. (Stipulation No. 9, Appendix, page 40a).

5. That Plaintiffs submitted requests for a pre-termination hearing both to DSS and to DCYS, and that the requests were denied on the grounds that no such hearings were available.[1] (Stipulation No. 8, Appendix, page 40a).

As to the legal issues of the case, the Defendants have conceded:

1. That the Social Security Act and regulations thereunder require written notice and a hearing prior to the termination, suspension, or reduction of Title XX social services. 42 U.S.C. §1397 et seq., 45 C.F.R. §228.14, §205.10. (Ruling, Appendix, page 26a; Appendix, page 69a).

2. That the Social Security Act and regulations thereunder require written notice and a hearing prior to the termination, suspension, or reduction of federally reimbursable foster care payments, 42 U.S.C. §608 et. seq., 45 C.F.R. §205.10. (Appendix, page 68a; Ruling, Appendix, page 26a).

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[1] In argument before the District Court, the Defendants contended that foster children have a right to a post-termination hearing, allegedly pursuant to Conn. Gen. Stat. §17-2a, the statute which entitles welfare recipients to post-termination hearings. Defendants admit, however, that no notice of such a "right" has ever been given to foster children (Appendix, page 67a), and that none was given to the Plaintiffs. The Defendants also concede that prior to the commencement of this suit in Federal Court, no such hearing had ever been held for a foster child in Connecticut. (Appendix, page 67a and 64a).

Plaintiffs contend, as well, that written notice and a hearing prior to termination, suspension, or reduction of foster care benefits -- whether or not federally reimbursable -- and of Title XX social services, are required by the Due Process Clause of the Fourteenth Amendment to the United States Constitution, Goldberg v. Kelly, supra, Mathews v. Eldridge, supra.

The Defendants do not agree with this last contention. Thus, the sole issue open and raised on this appeal is the Defendants' objection to the District Court's holding that the Due Process Clause requires written notice and a hearing prior to the termination, suspension, or reduction of foster care benefits or Title XX social services to the Plaintiffs and to their class.

STATEMENT OF FACTS

The Class

A foster child is one who is either judicially committed to the State or is temporarily under the care and protection of the State, and who is placed in 24-hour care outside the home of its natural parents. At the present time in the State of Connecticut, there are approximately 7,200 such foster children.[2]

Each foster child receives both cash benefits and social services. The monthly cash benefits are based upon a calculation by the Department of Children and Youth Services of the child's monthly needs for clothing, food, shelter, and personal expenses. (Stipulation no. 14, Appendix, page 40a). The monthly need calculation varies from $133 to $220.50 per month, depending upon the particular circumstances of the child.[3] The social services benefits include the assignment to the child of a social worker who provides counseling and other support services.

The foster care program for these children is administered by the Connecticut Department of Children and Youth Services (hereinafter, DCYS). However, the Connecticut Department of Social Services (hereinafter, DSS), has the responsibility for administering all federal funds made available to the State of Connecticut for public assistance under the Social Security Act, including the foster care program and the Title XX social services program involved in this case. (Until recently, the DSS provided foster care

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2 "Data Processing Print-Out of Payments System," Department of Children and Youth Services, February, 1977.

3 Public Assistance Manual of the State of Connecticut, Volume 2, Chapter IV, Index 351.1, Financial Arrangements for the Care of Foster Children, Effective July 1, 1974, attached to this Brief as Exhibit A.

itself directly.) It is for this reason that the Commissioners of both Departments are Defendants in this action.

Of the 7,200 foster children, approximately 4,800 have been committed to the custody of the State by Connecticut courts after formal judicial proceedings; the remaining 2,400 are children who are temporarily in the custody of the Commissioner, through voluntary agreement by their natural parents.[4]

Cash benefits to certain of those children judicially committed to the State are reimbursed 50% by the federal government through the provisions of 42 U.S.C. §608 , Aid to Families with Dependent Children-Foster Care (hereinafter, AFDC-FC). Cash benefits to children temporarily under state care, children boarding with relatives, and some judicially committed children are made from state funds which are not federally reimbursable.[5]

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4 "Data Processing Print-Out of Payments System," DCYS, supra.

5 In many states, the entire foster care program exists under 42 U.S.C. §608, for which the states are partially federally reimbursed. Connecticut, unlike those states, has a foster care program with two sources of funding: parts of the program are partially federally reimbursable, parts are run solely with state funds. "AFDC-FC" does not designate a separate foster care program--it merely signifies a partially different funding mechanism. To foster care recipients, the benefits are identical, whether they are federally reimbursable or not.

And, of course, the funding difference is without significance as far as the due process rights which attach: both involve governmental action. The single legal difference of relevance to this suit is that the federally reimbursable funds are subject to federal regulations under the Social Security Act, which require states to give written notice and hearings before reductions, suspensions, or terminations of the payments. Plaintiffs' contention is simply that foster children are entitled to the asserted pre-termination rights as a matter of due process, under the Fourteenth Amendment, independent of the federal statutory rights already existing.

Social service benefits, such as psychological counseling by social workers, are provided to both the judicially committed and the temporarily placed foster children through Title XX of the Social Security Act, 42 U.S.C. §1397 et seq.. Connecticut's expenditures under Title XX are reimbursed 75% by the federal government.

In the instance of the foster care benefits which are partially federally reimbursable, the Social Security Act and regulations thereunder require that such benefits may be terminated, suspended, or reduced only after prior written notice and a hearing, 42 U.S.C. §601 et seq., and 45 C.F.R. §205.10.

In the instance of Title XX social services, which all foster children receive or are eligible for, the Social Security Act and regulations thereunder require that such services be terminated, suspended, or reduced only after prior written notice and a hearing, 42 U.S.C. §1397 et seq., and 45 C.F.R. §§228.14, 205.10.

Despite the mandates of these federal statutes, at the time of the institution of this action, foster children in the State of Connecticut were subject to termination, suspension, or reduction of their cash benefits and their social services by the DSS and DCYS without written notice and without an opportunity for a hearing, either before or after the termination, suspension, or reduction occurred. No notice of an opportunity for a hearing was ever given; requests for such hearings were always denied. (Stipulation no. 9, Appendix, page 40a; Appendix page 64a, 65a).[6]

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[6] The first such hearing ever held by DSS or DCYS concerning the agency's action on foster care benefits was held for the Plaintiff children in this case at the request of the District Court after the commencement

The Plaintiff Foster Children

The Plaintiff Sockwell children are four minor children who reside with their great aunt and who received foster care payments from the State of Connecticut from April, 1973, until May, 1976. They challenge on constitutional and statutory grounds, the refusal of the Defendant Commissioners to afford them written notice and a hearing before terminating their foster care payments and social service benefits.

In 1973, the natural mother of the Sockwell children was incarcerated after her conviction for armed robbery. In April, 1973, the children's father voluntarily placed them with the Department of Social Services, which at that time administered the State's foster care program. The DSS, in turn, approached Mary Scott, of New Haven, the children's great aunt, and entered into a placement contract with her for the care of the four children. As a result, the children became a part of the Non-Committed Child Program of the State of Connecticut, Conn. Gen. Stat. §17-32(b), under which they received state-funded foster care payments and protective services.

The psychiatric social worker who saw the plaintiff Sockwell children at the time of their original placement, and who has seen them from then until the present, is Ms. Elizabeth Phillips of New Haven. Ms. Phillips, who is serving for the purpose of this action as the children's next friend, testified before the District Court that at the time of their placement, the four children were battered children; that they had been left alone without supervision; that one had been hospitalized for malnutrition;

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of this action. (Appendix, page 22a). The hearing officer held that there was no right to a pre-termination hearing and thus did not reach the merits of their claims to state-funded foster care benefits. (Appendix, page 42a).

that two were extremely emotionally disturbed; that all were in need of medical care; that they had had no immunizations. (Appendix, page 54a).

According to their practice, the DSS filed neglect petitions to obtain legal custody of the four children, see Conn. Gen. Stat. §17-62. In May, 1974, the Juvenile Court adjudged the children "homeless," as alleged in the DSS petition, and committed the children to the custody of the state. The children continued to live with their foster mother, Mrs. Scott, and received foster care payments solely from state funds for their entire period on foster care. In addition, commencing October 1, 1975, the children received social services which were funded in large part by the federal government under Title XX of the Social Security Act, 42 U.S.C. §1397, et seq.

On December 3, 1975, the judicial commitment of the children was revoked by a judge of the Superior Court. In spite of the poor physical and mental condition of the children when first placed by the Department, the Department's neglect petition had been based upon the sole allegation that "the children are homeless." The Superior Court judge found that this allegation of homelessness--unaccompanied by any allegation or proof of actual neglect or abandonment--was, under state law, a wholly insufficient basis upon which to find the children "uncared for" and to warrant the drastic change in legal custody of a commitment to the State. (Appendix, page 31a).

The District Court found that after the judicial commitment was revoked, the Defendants neither made an attempt nor expressed a desire to return the children to their natural parents. Nor did the Defendants attempt to recommit the children on the ground that they were neglected or abandoned in fact. However, rather than continuing to provide them with foster care payments from state funds, as they had done prior to the Juvenile Court

commitment in May, 1974, the Defendants, on April 1, 1976, 1976, terminated both the state-funded foster care benefits and the federally-funded social services, effective May 15, 1976. (Appendix, page 26a). The benefits were terminated without prior written notice or explanation of the grounds for termination and without an opportunity for a hearing. (Stip. no.7, App., page39a).

On April 1, 1976, Elizabeth Phillips submitted a written request for a hearing on the termination to John Harder, District Director of the Department of Social Services (First Amended Complaint, Exhibit C). That request was denied by Mr. Harder, who responded in writing that decisions made by DCYS were not appealable to the DSS under Conn. Gen. Stat. §17-2a, and therefore referred Ms. Phillips to DCYS with her request. (First Amended Complaint, Exhibit D).

On April 5, 1976, Ms. Phillips submitted a written request for a hearing for the children to the Fair Hearing Unit of the Department of Social Services (First Amended Complaint, Exhibit E). Ms. Priscilla Shea, Acting Supervisor of the Fair Hearing Unit, denied the request, stating that the Fair Hearing Unit of DSS had no jurisdiction over a termination of services by DCYS (First Amended Complaint, Exhibit F).

On April 8, 1976, Ms. Phillips submitted a written request for a hearing for the children to Defendant Maloney of the Department of Children and Youth Services (First Amended Complaint, Exhibit G). In response to this request, Ms. Phillips was informed by Donald Looney and Jeanette Dille of the DCYS that DCYS had no mechanism or procedure for such a hearing, and that the request could therefore no be granted. (Stipulation no. 8, Appendix, page 40a).

Harm To The Plaintiff Foster Children And To Their Class

When they received foster care payments, three of the plaintiff children received $133 each per month, and the youngest child received $127 per month, for a total monthly cash benefit payment of $527. When they were terminated from foster care, they applied for and received benefits as an AFDC unit, but as such the four plaintiff children received $311 a month less in financial aid. (Stipulations No. 12 and 13, Appendix, page 40a). Their termination from the foster care program also meant that they lost the services of a social worker assigned to work with them on a regular basis through the Title XX Social Services Program. (Appendix, page 65a). As AFDC recipients they could receive social services only upon specific requests.

Before the District Court, Mary Scott, plaintiffs' foster mother, and Elizabeth Phillips, the psychiatric social worker, testified as to the effect upon the children of the financial deprivation and the uncertainty arising from their termination from foster care.

Ms. Scott stated that the children had had severe reactions after she told them they had been discontinued from foster care. She stated that Cherise, age 10, had begun wetting the bed, required more frequent visits to the psychiatrists, required medicine from the doctor to calm her down, and that Cherise had told her teacher that everybody lies just like her [natural] mother. (Appendix, page 62a).

Ms. Scott testified that Rene, age 11, had returned to a problem of sleeping in school, a problem which the child had some time ago, which had cleared upon "when everything was settled down", and had begun again "now that things are back up in the air again." (Appendix, page 73a).

Mrs. Scott testified that Marsha, who is age 8, had requested some money for a school trip. When Mrs. Scott told her that she didn't have the money, the child threw herself down a flight of stairs and injured her head. (Appendix, page 73a).

Elizabeth Phillips testified that in her professional opinion, there would be severe immediate reactions which would become more acute over time (Appendix, pages 56a, 60a), and that the children would regress to their previous level of behavior. (Appendix, page 57a). Ms. Phillips testified that the Sockwell children are damaged children and that most foster children are, similarly, damaged. She testified that these immediate and long-term emotional problems of the plaintiff children resulting from the disruption of such a severe financial loss would take place for foster children in general (Appendix, pages 58a, 60a).

Based upon testimony of Mrs. Scott and Ms. Phillips, the District Court found that the termination of foster care benefits and social services had had a severe impact. He stated:

> The proof in the instant case revealed that the change from foster care to AFDC assistance resulted in the plaintiff children receiving over $300 a month less in financial aid. While not causing the children to be deprived of essential food, clothing, and shelter, this loss has materially affected their well-being. Their foster mother's dire financial condition is reflected in the children's growing sense of dissatisfaction and insecurity in the home. Several of the children have had to make more frequent visits to their psychiatrist and have become less able to deal with stressful situations in school and at home. Moreover, the children have lost the services of a social worker assigned to work with them on a regular basis.
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> (Appendix, pages 28a, 29a).

The Court concluded that the harm to the Plaintiffs and deprivations to other members of the class appeared to be severe, and that the Plaintiffs had demonstrated the possibility of irreparable harm to themselves and their class sufficient to warrant preliminary injunctive relief. (Appendix, page 29a).

ISSUES PRESENTED

As indicated above, the District Court, after hearing testimony and argument at two hearings, issued a preliminary injunction. He applied the test established in this Circuit, Sonesta International Hotels Corp. v. Wellington Associates, 483 F.2d 247 (2d Cir. 1973). (See, Ruling of the District Court, Appendix, pages 25a and 29a).

This Circuit follows the well-established rule that the issuance of a preliminary injunction, whatever its form, is in the District Court's discretion, and will not be overturned absent a showing of clear abuse of discretion. Jacobsen and Company, Inc. v. Armstrong Cork Company, ___U.S. ____(2nd Cir., January 25, 1977); Checker Motors Corporation v. Chrysler Corporation, 405 F.2d 319 (2d Cir. 1969).

Therefore, the issues presented on this appeal are only two:

1. WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION IN RULING THAT THE PLAINTIFFS WILL PROBABLY SUCCEED IN ESTABLISHING THAT THE STATE OF CONNECTICUT VIOLATES THE STANDARDS OF GOLDBERG V. KELLY AND MATHEWS V. ELDRIDGE, BY ITS PRACTICE OF TERMINATING, SUSPENDING, AND REDUCING NEED-RELATED CASH BENEFITS AND SOCIAL SERVICES OF FOSTER CHILDREN WITHOUT ANY PROCEDURAL PROTECTION WHATSOEVER PRIOR TO THE DEPRIVATION.

2. WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION IN RULING THAT THE PLAINTIFFS HAD ESTABLISHED THE POSSIBILITY OF IRREPARABLE HARM TO THEMSELVES AND TO THEIR CLASS.

ARGUMENT

I. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN RULING THAT THE PLAINTIFFS WILL PROBABLY SUCCEED IN ESTABLISHING THAT THE STATE OF CONNECTICUT VIOLATES THE STANDARDS OF GOLDBERG V. KELLY AND MATHEWS V. ELDRIDGE BY ITS PRACTICE OF TERMINATING NEED-RELATED CASH BENEFITS AND SOCIAL SERVICES OF FOSTER CHILDREN WITHOUT ANY PROCEDURAL PROTECTIONS WHATSOEVER PRIOR TO THE DEPRIVATION.

In Mathews v. Eldridge, supra, the Supreme Court set forth three distinct factors which must be considered in determining the specific dictates of due process in a given situation:

> ...first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of addition or substitute procedural safeguards; and finally, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. Mathews, supra, at 335.

The District Court applied these Mathews tests to the Plaintiffs' situation and ruled that they would probably succeed on the merits of their claims.

A. Even If Post-Termination Hearings Were Provided By The State, They Would Not Be Sufficient To Protect The Interests At Stake. A Pre-Termination Oral Hearing Is Necessary.

In determining the amount of protection due process requires in a given circumstance, the severity of the deprivation and its potential impact are crucial factors, Goldberg v. Kelly, supra, Mathews v. Eldridge, supra.

In Mathews, the Supreme Court held that potential deprivation of social security benefits was generally likely to be less severe than the loss of welfare benefits involved in Goldberg.

The Court's distinction rested on the fact that in Goldberg, the benefits were based upon financial need, whereas eligibility for social security benefits is not. The Court stated:

> Eligibility for disability benefits, in contrast, is not based upon financial need. Indeed, it is wholly unrelated to the worker's income or support from many other sources, such as earnings of other family members, workmen's compensation awards, tort claims awards, savings, private insurance, public or private pensions, veteran's benefits, food stamps, public assistance, or the "many other important programs both public and private, which contain provisions for disability payments affecting a substantial portion of the work force...." Mathews, supra, at 340.

Monthly benefits to each foster child are based upon a calculation by DCYS of the child's needs for shelter, clothing, and food. Since foster care benefits are based upon need, their termination may lead to deprivation of the recipient's means by which to live while awaiting a review of the agency action. Goldberg thus requires notice and a hearing prior to their termination.

The Court will note that Defendants strenuously urge that the Eldridge exception is triggered by the fact that the plaintiff children were eligible for AFDC benefits after their foster care benefits were terminated. This argument was clearly raised before the District Court and clearly rejected by it. The Court found that the financial deprivation and accompanying emotional and psychological effects were so severe that they established the possibility of irreparable harm to the Plaintiffs in spite of their ability to offset somewhat their financial loss. The facts before the Court below clearly substantiate this decision. (Appendix, 72a-74a, 55a-59a).

Moreover, it is evident that harm to other class members, whose loss will not be offset by AFDC benefits, can only be more severe than the Plaintiffs' loss, and not less.

Furthermore, the interests at stake here are more than merely finanical. As specifically demonstrated by the named plaintiffs, foster children in general have a unique interest in avoiding uninterrupted receipt of their benefits: that of minimizing significant disruptions to their lives to the greatest extent possible.

The need for continuity and stability in the lives of foster children is well documented today. The 1975 report on foster care and adoptions issued by Senator Walter Mondale's Subcommittee on Children and Youth states:

> Central to the rights of a child are the rights to permanence, stability, continuity and nurture during childhood.[7]

And Goldstein, Freud and Solnit, acknowledge authorities on the problems and interests in child placements outside the home, state:

> Continuity of relationships, surrounding, and environmental influence are essential for a child's normal development. ...The instability of all mental processes during the period of development needs to be offset by stability and uninterrupted support from external sources. Smooth growth is arrested or disrupted when upheavals and changes in the external world are added to the internal ones.[8]

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[7] "Foster Care and Adoption: Some Key Policy Issues," prepared for the Subcommittee on Children and Youth of the Committee on Labor and Public Welfare of the United States Senate, (1975), page 5.

[8] Goldstein, Freud, and Solnit, Beyond the Best Interests of the Child, Macmillan Publishing Co., 1973, page 31.

As indicated in the Statement of Facts, the plaintiff foster children had severe emotional and psychological reactions upon learning that they had been terminated from foster care. They regressed to earlier problems of bed-wetting, sleeping in school, and self-destructive episodes which had disappeared during their period of stability on foster care. (Appendix, pages 72a-74a). And the District Court found that the loss of foster care benefits and social services

> ...as materially affected [the children's] well-being. ...[Their foster mother's] dire financial situation is reflected in the children's growing sense of dissatisfaction and insecurity in the home. Several of the children have had to make more frequent visits to their psychiatrist and have become less able to deal with stressful situations in school and at home. (Ruling, Appendix, pages 28a, 29a).

And there was testimony from a psychiatric social worker who has worked with foster children for 20 years that, in her professional opinion, foster children in general would have similar reactions if faced with the same circumstances. (Appendix, pages 58a, 60a).

The Defendants argue that pre-termination notice and hearings are unnecessary in the case of foster children. They argue that a post-termination hearing should be sufficient to protect foster children's interests, and that they are entitled to such a hearing under Conn. Gen. Stat. §17-2a, which provides post-termination hearings on decisions of the welfare commissioner.

The Defendants' argument about the protection allegedly afforded by Conn. Gen. Stat. §17-2a is at best disingenuous, in view of their concession

to the trial Court that no hearing has ever been held for a foster child pursuant to that statute; that no foster child or parent has ever been informed that such a hearing was available, and that, in fact, requests for such hearings (as were made by the Plaintiffs) were denied by both DSS and DCYS. (Appendix, pages 67a, 64a; Stipulation no. 8, Appendix, page 40a). But even if a procedure for post-termination hearings becomes a reality for foster children--rather than merely an argument to be used before a Court--Plaintiffs contend that such post-termination hearings would be insufficient to protect the interests at stake in this case. The effects of the brutal financial problems and the emotional and psychological problems which result from the disruption of foster care benefits cannot be rectified by post-termination hearings or subsequent judicial review, nor by retroactive restoration of financial and social service benefits. Particularly in the case of foster children, the benefits cannot be turned off and on again without substantial damage being done in the process.

Under the standards of Goldberg and Mathews, then, the interest of the plaintiff class in uninterrupted benefits is such that pre-termination hearings are essential.

B. The Inquiries Relevant upon Suspension, Reduction or Termination of Foster Care Benefits Are Appropriate for Resolution at Pre-Termination Hearings.

In Goldberg v. Kelly, supra, the Supreme Court considered a need-related welfare program almost identical to that involved in the instant case. It held that written notice and an opportunity for an oral hearing prior to termination

> ...are important in cases such as those before us, where recipients have challenged proposed terminations as resting on incorrect or misleading factual premises or on misapplication of rules or policies to the facts of particular cases. Goldberg, supra, at 299.

And the Court found oral pre-termination hearings particularly important where credibility and veracity are at issue. Goldberg, supra, at 300.

Since that time, courts have considered the requirements of due process in light of the suitability of a pre-termination hearing to the nature of the inquiry involved in the particular situation presented. Thus, the Supreme Court in Mathews v. Eldridge, supra, emphasized that they found such a hearing unsuitable in light of the issues there involved.

In Mathews, the issue in question was whether a recipient of social security disability benefits could continue to "demonstrate by means of 'medically acceptable clinical and diagnostic techniques,' 42 U.S.C. §423(d)(3), that he is unable 'to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment....' §423(a)(1)(A)" /emphasis supplied by the Court/. Mathews, supra, at 343.

The Court held that this issue was distinctly different from the issues usually involved in welfare entitlement determinations. It stated:

> This is a more sharply focused and easily documented decision that the typical determination of welfare entitlement. In the latter case, a wide variety of information may be deemed relevant, and issues of witness credibility and veracity often are critical to the decision-making process. Goldberg noted that in such circumstances "written submissions are a wholly unsatisfactory basis for decision." 397 U.S. at 269.
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> By contrast, the decision whether to discontinue disability benefits will turn, in most cases, upon "routine, standard, and unbiased medical reports by physicial specialists, "Richardson v. Perales, 402 U.S. at 404, concerning a subject whom they have personally examined. In Richardson, the Court recognized the "reliability and probative worth of written medical reports," emphasizing that while there may be "professional disagreement with the medical conclusions" the "specter of questionable credibility and veracity is not present." Id., at 405, 407. To be sure, credibility and veracity may be a factor in the ultimate disability assessment in some cases. But procedural due process rules are shaped by the risk of error inherent in the truth-finding process as applied to the generality of cases, not the rare exceptions. The potential value of an evidentiary hearing, or even oral presentation to the decision-maker, is substantially less in this context than in Goldberg. Mathews, supra, at 343.

This Court's decision in Frost v. Weinberger, 515 F.2d 57 (2d Cir. 1975), applied the same analysis to this aspect of a due process decision. In Frost, two rival sets of claimants were engaged in an adversarial proceeding to establish specific historical facts which would prove or disprove paternity, and thus determine the claimants' entitlement to Social Security survivors' benefits. The Court realized that an inquiry of that nature may involve detailed investigation, require the accumulation of evidence not immediately accessible to the administering agency, and necessitate the presence of a

number of witnesses not immediately available. In view of these facts, the Court held that a pre-termination hearing was inappropriate. Such difficulties would seldom, if ever, be present in the case of foster children.

In addition, the Court in Frost, gave weight to the fact that the Social Security Administration already employed substantial pre-termination procedures for notice to, and submission of evidence by, the parties. Furthermore, the Court noted that "the fact that the Social Security Administration has no financial stake and is totally disinterested as between the two sets of claimants should help to insure a correct pre-reduction decision." Frost, supra, at 68. In this case, the state assumes no such neutral position.

The issues relevant to termination, suspension and reduction of foster care benefits will, in a large majority of cases, be precisely those identified in Goldberg, i.e., factual determinations, the application of rules or policies to the facts of particular cases, and questions involving the credibility and veracity of witnesses. Of course, certain facts, such as the status of the foster child's legal custody, may well be satisfactorily presented by documentation. But in almost every case, the factual question of whether a child is "at risk" and thus a proper subject for foster care will turn sharply on disputed matters involving witness credibility and judgment. So would the issue of whether a blood-related foster parent would be willing and able to support the child without foster care funds, Connecticut Public Assistance Manual, Vol. 2, Chapter IV, Index 355.2. So would the

question of whether the child continues to be in financial need. And where, as here, many different issues will be involved, it is crucial that the flexibility of oral presentation be provided, to permit the recipient or his representative to mold his arguments to those the decision-maker regards as important. Goldberg, supra, at 269.

The case of the four named plaintiffs is a fine example. The Defendants have taken the position that the termination from foster care was necessitated by the revocation of judicial commitment. That contention completely ignores established DCYS policy and regulations.

In fact, the revocation of commitment, even if not questioned in and of itself meant only that the plaintiff children were not eligible for federally-reimbursable funds, for which judicial commitment is a prerequisite. It in no way precluded their eligibility for the program they were initially on, the Non-Committed Child Program, whose name clearly indicates its appropriateness for the Plaintiffs' situation. The questions which remained to be decided after the revocation of commitment, which should have been addressed at a hearing, included:

1. Were the children still in need of the care and protection of someone other than their natural parents?
2. Were the children for any reason ineligible for the Non-Committed Child Program? Public Assistance Manual Vol. 2, Chapter IV, Index 532, attached hereto as Exhibit B.
3. Were the children still in need of the social services available to them only under foster care?

Testimony of the foster mother, the social worker, a psychiatric social worker, and the arguments of counsel would have been appropriate at such a hearing.

In addition, at a hearing Plaintiff children would have been able to raise a crucial issue which the Defendants have sought assiduously to ignore, that is, that the DSS and the DCYS themselves were responsible for the revocation of the children's judicial commitment. The revocation was due to the failure of the neglect petition filed by the Department to satisfy state law by alleging and proving actual neglect, which clearly existed in the Plaintiffs' case. At a hearing, the children would have been able to raise the equitable argument that since the reason for their change in status was due to mishandling of their case by the Department, the Department itself had an obligation to attempt to rectify the error and its consequences.

The Defendants are correct that the fact of the commitment revocation could be established by documentary evidence. The Plaintiffs have never contended otherwise. But questions surrounding the revocation proceeding itself, and several issues which existed regardless of the commitment

revocation, are issues which do not fall under the Mathews exception. They are factual issues, depending upon the credibility of witnesses, and which are of the kind Goldberg found required a pre-termination hearing.

Another example may be illuminating. The Court in Goldberg was especially concerned about procedural protections in cases "where recipients ...challenged proposed terminations as resting on incorrect or misleading factual premises or on misapplication of rule or policies to the facts of particular cases." Goldberg, supra, at 299 [emphasis added]. A foster child who has applied for permission to intervene in this action makes precisely this claim: under DCYS policy as stated in Volume 2, Chapter IV, Index 354 of the Public Assistance Manual of the State of Connecticut*, a foster child who attends college will have her tuition, board, and extra expenses paid to the extent that he or she cannot obtain scholarships. The Applicant for Intervention began college and then found her foster care benefits of $143 a month discontinued. She was told she had no right to foster care payments and no right to a hearing, either pre-suspension or post-suspension, to contest this decision. She may be forced to leave her college at the end of this year if this state of affairs is not altered.

This foster child was never informed of her rights by the Department; in fact, she was told she had none, either substantive or procedural. By the time she fortuitously acquired the information that she was entitled to benefits under DCYS policy, seven months had passed since her funds had been discontinued. She had lost approximately $1,000 in the interim. A

* Attached hereto as Exhibit C.

pre-termination hearing could have avoided the entire error.

These are specific examples illustrative of the appropriateness of pre-termination hearings under the principles of Goldberg and Mathews.

It should be noted that the District Court found, as to the class, that:

> Any decision to terminate or reduce foster care payments may involve matters of credibility and veracity concerning the willingness of the foster parent to support the child, the financial condition of the child, and whether the child is still "at risk" or "neglected" and in need of foster care. Such issues are best resolved at a hearing. (Appendix, page 28a).

C. Prior Notice And Hearings Are Not In Conflict With The Public Interest.

In Mathews, and in the cases on which it relies, "the public interest" is a factor in assessing the adequacy of existing state procedures. As described in Mathews, this interest is the question of the incremental financial cost and burden to the State of the due process safeguard being sought.

The instant case was begun at a time at which the DCYS and DSS had no system for notice and hearings whatsoever in regard to changes in or terminations of foster care benefits -- either pre-termination or post-termination. The Departments themselves, however, argue that post-termination hearings for all foster children upon request are required by Connecticut law, and that in the case of Title XX benefits and federally reimbursable foster care benefits, both pre-andpost-termination notice and hearings are required by federal law. Even to bring itself into compliance with existing law, the State must establish those procedures -- regardless of the claims or the outcome of this action.

When the Mathews Court speaks of incremental cost and burden, it clearly does not include the expense to the agency of bringing itself into compliance with existing law. The incremental administrative cost and burden to the State attributable to the safeguard sought by the plaintiffs, therefore, is actually only the expense attributable to providing pre-termination notice and hearings in the cases of foster children whose payments come entirely from state funds. This administrative cost surely

is minimal: assuming that DCYS and DSS comply with existing law and provide post-termination hearings in all cases and pre-termination hearings in AFDC-FC funded and Title XX cases, then the incremental cost to the State of processing terminations, suspensions, and reductions of state-funded foster benefits through that system surely cannot be great.[9]

In addition, in Mathews, the Court gave weight to the additional expense the Social Security Administration would assume in providing benefits to ineligible recipients pending the decision from an oral pre-termination hearing. Noting the vast number of recipients on that program and the extended period of delay before hearing decisions were rendered, Mathews, supra, at 342, the Court held that the additional cost involved simply outweighed the protection that an oral hearing would add to an elaborate review process which already provided substantial pre-termination protections.

The enormous administrative burden and cost anticipated in Mathews far exceeded those that would result in this case.

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[9] DCYS regulations promulgated after the Preliminary Injunction issued in this case, indicate that in processing the post-termination foster care hearings, the State will merely use the existing Fair Hearing Unit of the DSS, which presently holds hearings for AFDC suspensions, terminations, and reductions pursuant to 45 C.F.R. §205.10. No new post-termination hearing system will need to be established.

Mathews noted, "Financial cost alone is not a controlling weight." Mathews, at 348. As the Court stated in Goldberg,

> The requirement of a prior hearing doubtless involves some greater expense, and the benefits paid to ineligible recipients pending decision at the hearing probably cannot be recouped, since these recipients are likely to be judgment-proof. But the State is not without weapons to minimize these increased costs. Much of the drain on fiscal and administrative resources can be reduced by developing procedures for prompt pre-termination hearings and by skillful use of personnel and facilities. Goldberg, at 298.

In the instant case, the admonition of the Goldberg Court is particulary apt. Since the incremental costs Plaintiffs suggest in very small compared to either of these earlier Supreme Court cases, the State can use existing structures and the prompt processing of claims to keep the cost within reasonable bounds. Where such important rights are at stake, due process requires that it do so.

It is essential to understand that the increased financial burden is weighed in view of the adequacy of existing agency procedures. Mathews, for example, gave great weight to the fact that the Social Security Administration (SSA) has an elaborate review process which already provides substantial pre-termination protections to beneficiaries. Specifically, as the Court noted,

> Whenever the agency's tenative assessment of the beneficiary's condition differs from his own assessment, the beneficiary is informed that benefits may be terminated, provided a summary of the evidence upon which the proposed determination to terminate is based, and afforded an opportunity to review the medical reports and other evidence in his case file. He also may respond in writing and submit additional evidence.

> The state agency then makes its final determination, which is reviewed by an examiner in the SSA Bureau of Disability Insurance. If, as is usually the case, the SSA accepts the agency determination it notifies the recipient in writing, informing him of the reasons for the decision and of his right to seek de novo reconsideration by the state agency. Upon acceptance by the SSA, benefits are terminated effective two months after the month in which medical recovery is found to have occurred. Mathews, supra, at 337.

In view of these existing pre-termination procedures, the additional value of an oral hearing was held unnecessary. In the instant case, the State provides no procedure whatsoever prior to the termination, suspension, or reduction of benefits. In this case, therefore, the value of the additional procedural protection clearly outweighs the State's additional expense in providing it.

II. THE APPLICABILITY OF THE SOCIAL SECURITY ACT AND FEDERAL REGULATIONS TO THE NAMED PLAINTIFFS IS IRRELEVANT TO THIS APPEAL. EVEN IN AN INSTANCE IN WHICH IT WERE RELEVANT, THE EXCEPTION TO THE PRE-TERMINATION HEARING REQUIREMENT PROPOSED BY THE DEFENDANTS IS INCORRECT.

Defendants' second "Issue" is irrelevant to this appeal. They argue that the named Plaintiffs fall under a certain exception to the federal statutory requirement for a pre-termination hearing for recipients of federally reimbursable AFDC-FC funds and Title XX services.

It has been agreed by the parties that the named Plaintiffs were paid solely from State funds. Therefore, the provisions of the Social Security Act and regulations thereunder do not apply to them. Accordingly, the question whether or not the named Plaintiffs are entitled to a pre-termination hearing pursuant to federal statutes and regulations is simply irrelevant to this appeal.

For the benefit of the Court, Plaintiffs note that even in instances in which the federal regulations are applicable to a foster child, the Defendants' proposition is incorrect. Defendants argue that in cases where a child's judicial commitment is revoked, the child falls under the exception of 45 C.F.R. §205.10(a)(5), and is therefore not entitled to a pre-termination hearing. This proposed application of §205.10(a)(5) is incorrect, for reasons fully set out in the District Court's Ruling, where he rejected Defendants' argument:

> The argument that such process /written notice and a hearing prior to reduction or termination of AFDC-Foster Care payments or social services rendered under Title XX/ is not required because the termination of AFDC-Foster Care payments is automatic when judicial commitment is revoked, is without merit. The relevant statute, 45 C.F.R. §205.10(a)(5), refers to changes in state or federal law which affect classes of recipients, and not to judicial determinations made on an individualized basis. In addition, the regulation refers specifically to "automatic grant adjustments" and not to termination of benefits. Since the regulations expressly exempt this one

> circumstance in which a hearing before grant adjustments is not required, the Court infers that a hearing before reduction or termination is required in all other situations. (Appendix, page 27a).

And the Court noted,

> Moreover, even in cases of automatic grant adjustment in which a hearing before reduction is not required, the regulations provide for notice and a statement of reasons for the change ten days before the effective date of the action. 45 C.F.R. §205.10(a)(4)(iii). In this case, Defendants failed to afford Plaintiffs even this minimal due process safeguard. (Appendix, page 27a, n. 8).

Thus, even where federal regulations are applicable, the Defendants' contention is incorrect.

III. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN RULING THAT THE PLAINTIFFS HAD ESTABLISHED THE POSSIBILITY OF IRREPARABLE HARM TO THEMSELVES AND TO MEMBERS OF THEIR CLASS.

Plaintiffs have summarized in the Statement of Facts, the testimony received by the District Court as to the harm suffered by the Plaintiff children as a result of the severe financial deprivation and the uncertainty which arose from their termination from foster care.[10] There is no need to repeat it here.

In Section I(A) of the Argument of this Brief, addressing the nature of the private interest at stake, Plaintiffs have presented the explanation of the particular nature and irreparability of the harm, both emotional and psychological, in the case of foster children.

It is clear that the financial deprivation alone is substantial, and that the emotional and psychological injury involved are severe. The District Court gave ample reason for his finding of irreparable harm:

> The irreparable harm that may arise from the summary deprivation of this property interest is clear. Foster children depend on foster care payments for their living essentials. Foster parents obligate themselves to care for these children on the assurance that they will receive support from the state. The reduction or termination of payments undoubtedly places a strain on the foster parent/foster child relationship. As a consequence, the child psychologically may feel less wanted and insecure in the foster home. (Appendix, page 28a).

The Court continued, noting:

10. The original testimony appears at pages 71a through 74a of the Appendix.

> The proof in the instant case revealed that the change from foster care to AFDC assistance resulted in the plaintiff children receiving over $300 a month less in financial aid. While not causing the children to be deprived of essential food, clothing, and shelter, this loss has materially affected their well-being. Their aunt testified that she is unable to buy them new clothes or to send them on school trips or summer vacations. Her dire financial condition is reflected in the children's growing sense of dissatisfaction and insecurity in the home. Several of the children have had to make more frequent visits to their psychiatrist and have become less able to deal with stressful situations in school and at home. Moreover, the children have lost the services of a social worker assigned to work with them on a regular basis. (Ruling, Appendix, page 29a).
>
> The harm to the named plaintiffs and deprivations to other members of the class appear to be severe. As the Court said in Goldberg, "the interest of the eligible recipient in uninterrupted receipt of public assistance, coupled with the State's interest that his payments not be erroneously terminated, clearly outweighs the State's competing concern to prevent any increase in fiscal and administrative burdens." 397 U.S. at 266; see also Maltern v. Weinberger, 519 F. 2d 150 (3 Cir. 1975); cf. Frost v. Weinberger, supra. Therefore, the Court finds that plaintiffs have shown a probable likelihood of success on the merits and irreparable harm to themselves and the plaintiff class sufficient to warrant preliminary injunctive relief. (Ruling, Appendix, page 29a).

This finding is amply justified in the record, and should not be disturbed.

IV. THERE IS NO LEGAL JUSTIFICATION FOR DEFENDANTS' ATTEMPT TO LIMIT PLAINTIFFS' CLAIM TO THEIR OWN PRECISE FACTS.

The Court below properly certified this matter as a class action. In his "Ruling on Plaintiffs' Motions for Class Certification and for Preliminary Injunction," Judge Zampano noted that, "Plaintiffs sought certification for a class of 'all present and future foster children whose foster care benefits or Title XX social services are, or will be, discontinued, terminated, suspended, or reduced by the State of Connecticut." The Court found that the class so requested met each of the prerequisites of Rule 23(a) and 23(b)(2), and was satisfied that certification should be granted. (Appendix, page 23a).

In so certifying the class, the District Court specifically rejected the Defendants' argument that the class should be limited to fact situations identical with that of the Plaintiffs, i.e., termination after judicial commitment was revoked, and where AFDC benefits were available. (Appendix, page 23a). Thus, the Court granted class action status after proper procedures and with necessary definiteness.

Now, however, the Defendants' persistant emphasis upon the particular characteristics of the named Plaintiffs seems to be an implied if not an explicit attempt to characterize the issues in this case as if their proposed, narrower definition of the appropriate class had prevailed. Such a position on the appeal of a preliminary injunction, however, is virtually precluded by Judge Zampano's finding that the interests of

the named plaintiffs are typical of those of the class. This finding, based upon testimony taken at two hearings, is within the discretion of the district court and is well supported by fact and law. Dolgow v. Anderson, 43 F.R.D. 472 (E.D.N.Y. 1968).

In Dolgow, the Court stated:

> The common issues need not be dispositive of the entire litigation. The fact that questions peculiar to each individual member of the class may remain after the common questions have been resolved, does not dictate the conclusion that a class action is not permissible. At 490.

Here, the common questions concern the due process right to notice and opportunity to be heard prior to reduction, suspension, or termination of foster care payments and social services.

In this case, the Defendants assert that the named Plaintiffs were terminated from foster care because of a change in their legal status. The benefits of other foster children have been and will be reduced, suspended, and terminated for a variety of reasons. The Supreme Court has clearly indicated, however, that the common factors, not the particularized features, should guide the Court decision. In Mathews v. Eldridge, the Court said:

> "[P]rocedural due process rules are shaped by the risk of error inherent in the truth-finding process as applied to the generality of cases, not the rare exceptions" [emphasis added]. Mathews, supra, at 343.

Here, the representative Plaintiffs must be premitted to present arguments for the generality of cases; i.e., terminations, like theirs, based on the termination of judicial commitment, reductions based upon the financial condition of the child, suspensions or terminations grounded on the allegation that a child is no longer "at risk," and termination, reductions, or suspensions of all sorts based upon misapplication of DCYS policy. Confining the Plaintiffs to only a portion of the arguments available to their class would not provide the basis for a competent decision on the "generality of cases."

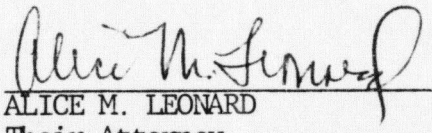
In determining whether the District Court has abused its discretion in determining that the facts and the law of this case warranted a preliminary injunction, this Court must consider the types of cases common to the entire class.

V. CONCLUSION

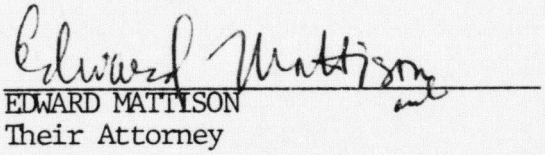
On the basis of the foregoing, Plaintiffs respectfully request that this Court affirm the District Court's issuance of the Preliminary Injunction.

Respectfully Submitted,

THE PLAINTIFFS



ALICE M. LEONARD
Their Attorney



EDWARD MATTISON
Their Attorney

351 Basic Foster Home Care Rates - Board, Incidentals, Clothing, Spending Allowance

351.1 Basic Foster Home Care Rates

The Department has established five basic foster home care rates, hereafter referred to as Rate I, Rate II, Rate III, Rate IV, and Rate V.

Rate I is the standard rate applicable to the normal average child of any age. The age differential no longer pertains. Rates II, III, IV, and V have been designed to meet extra or specialized care and/or services in individual case situations, and are brought above the standard rate.

All rates, with the exception of Rate I, require prior authorization by the Program Supervisor. This includes rates authorized on a W-1077 as well as a W-1078.

The rates do not include:

1. Medical, dental, hospitalization, etc. (See Manual Vol. 3, Medical Care)
2. Initial clothing outfit. (See Index No. 351.13)
3. Special recurrent and/or non-recurrent expenses. (See Index No. 351.12)

Foster Home Care Rates Chart

For reference, the following chart shows the established foster home care rates which include amounts for board, incidentals, clothing replacement and spending allowance, related to the age groups, plus extra care and service payments in Rates II through V.

The rates are based on the weekly rates of $19, $21, $24, $29, and $39, converted to a monthly rate and the totals rounded out to the nearest quarter.

(continued on following page)

EXHIBIT A, p. 1

FOSTER CARE FOR CHILDREN

Financial Arrangement for the Care of Children — 351.1 - page 2

Basic Foster Home Care Rates (contd)

MONTHLY RATES

AGE	ITEMS	STANDARD RATE I	SPECIAL RATES II	III	IV	V
0-3	Board	$117.21	$125.91	$138.95	$160.72	$204.1
	Clothing	9.85	9.85	9.85	9.85	9.8
		$127.06	$135.76	$148.80	$170.57	$213.9
	Adjusted Amount	$127.00	$136.00	$149.00	$170.50	$214.0
4-5	Board	$117.21	$125.91	$138.95	$160.72	$204.1
	Clothing	11.50	11.50	11.50	11.50	11.5
		$128.71	$137.41	$150.45	$172.22	$215.6
	Adjusted Amount	$128.50	$137.50	$150.50	$172.00	$215.5
6-11	Board	$117.21	$125.91	$138.95	$160.72	$204.1
	Clothing	13.90	13.90	13.90	13.90	13.9
	Spending Allow.	1.75	1.75	1.75	1.75	1.7
		$132.86	$141.56	$154.60	$176.37	$219.7
	Adjusted Amount	$133.00	$141.50	$154.50	$176.50	$220.0
12-14	Board	$117.21	$125.91	$138.95	$160.72	$204.1
	Clothing	15.65	15.65	15.65	15.65	15.6
	Spending Allow.	2.60	2.60	2.60	2.60	2.6
		$135.46	$144.16	$157.20	$188.97	$222.3
	Adjusted Amount	$135.50	$144.00	$157.00	$189.00	$222.5
15 & over	Board	$117.21	$125.91	$138.95	$160.72	$204.1
	Clothing	15.65	15.65	15.65	15.65	15.6
		$132.86	$141.56	$154.60	$176.37	$219.76
	Adjusted Amount	$133.00	$141.50	$154.50	$176.50	$220.00

EXHIBIT A, page 2

Revised 6-28-74
Effective 7-1-74

Services for Non-Committed Children 532

532 Eligibility

A. Criteria for Eligibility of Placement Services

1. The child cannot be served in his own home.

2. The parents are financially unable to meet the total cost of care or treatment, based on the attached income levels, and other public resources are not available.

3. The child's situation requires placement for treatment or care away from the family and home.

4. There is prognosis of a reasonably healthy parent-child relationship and the parents will involve themselves and continue to maintain a relationship with the child while he is out of the home.

5. Where commitment would otherwise be resorted to in order to provide the necessary treatment.

6. The child has not reached his sixteenth birthday at time of referral.

All six of the above criteria must be applied in each case in determining eligibility for assistance as a non-committed child under this program.

Examples of the type of situations which qualify (these are not necessarily all inclusive):

a. An emotionally disturbed child needing residential treatment who cannot be admitted to present public facilities in the state, nor be provided for by other public or private funds.

b. A mentally retarded child who must be placed out of the home to prevent family disorganization, and who cannot be cared for through the Office of Mental Retardation.

c. A handicapped child who requires special care, treatment, or training not provided for by an existing public or private agency in the state.

d. Placement in foster care while parents or relatives work through a plan which will not result in commitment.

e. Situations where parent is in a TB sanitorium, a mental hospital, or is suffering from an extended illness or injury, is expected to recover and reestablish the home, where relationship with the child has always been wholesome and normal, and where commitment might jeopardize recovery.

(continued on following page)

Eligibility (contd)

It is anticipated that the child will return home when plans are completed, or that permanent plans are made in some other setting under other funds, such as placement in a state public institution.

When long-time or permanent placement is indicated or where involvement of the parent cannot be counted on, or where the parent shows lack of interest and involvement in the child after placement, the commitment may be a more guaranteed form of assuring and providing needed care and protection.

B. Non-eligible Cases

Types of cases which will not be accepted under the program:

1. Situations in which there is no approved home for the child to which the child can return.

2. Children placed prior to and waiting hearing on petition for commitment.

3. Emergency short-time placements for which the town should assume responsibility (Sec. 17-40 of the General Statutes). This includes situations when the town is in process of a plan which may not be completed before the 30-day expiration date, i.e., return of child to another state or country.

4. Children whose parents refuse to involve themselves in the placement or treatment plan and want to relieve themselves of all responsibility toward the child.

5. Private agency cases such as pre-adoption placements, or single short-term services such as medical, psychiatric, or psychological examinations request by private agency (excluding Title XIX).

6. Children who have been committing delinquent acts and need a controlled or, at times, a closed setting of a correctional nature.

7. Placements in private boarding school for purely standard educational objectives.

Revised 9-26-72
Effective 9-1-72

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354 School and College Placements

Board, tuition and required extras will be paid for a child in boarding school or college placement as billed by the school. All resources including the child's estate, savings, scholarships, and working arrangements are explored and used. The plan for the child's attendance in a college placement must be submitted in writing to the Child Welfare Field Supervisor for approval, giving total costs, financial resources, scholarships, work, living and vacation arrangements, etc. (Refer to Manual material, Index No. 640 - Estates and Benefits and material beginning with Index No. 660 - Earnings and Savings.)

EXHIBIT C